IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 903 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVAR TWISTING WORKS THRO'PROP.ASHOK N MEHTA

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR ZUBIN F BHARDA for the Petitioner.

MR SN SINHA for the Respondents.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 14/07/2004

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has

challenged the order dated 12th June, 2002 in Appeal No. SZ/12(15) passed by the appellate committee of the respondent, whereby the appeal of the petitioner (original appellant) has been partly allowed.

2. The learned counsel for the petitioner mainly submitted that when the premises of the petitioner was checked by the officers of the respondent authority on 22nd February, 1999, a request was made by the petitioner to produce evidence for the purchase of twisting machines. The main contention of the appellant was that one of the twisting machines was purchased recently and installation work of the said machine was going on when the premises of the petitioner was checked by the officers of the respondents. Therefore, the calculation of the total HP, reckoned by the respondent authority which includes the HP of twisting machines is excessive so far as as one of the twisting machines is concerned. The respondent authority has wrongly included in calculation of total HPs, the Horse Powers of twisting machine. In fact, the installation of twisting machine was going on, on the date of checking of the premises of the petitioner i.e. on 22nd February, 1999. To substantiate the contention of the petitioner before the appellate committee, it was submitted that the said machine was purchased on 31st January, 1999 and therefore, the supplementary bill should be calculated by reducing HPs for the said twisting machine.

3. The learned counsel for the respondents submitted that the so called xerox copy of the bill dated 31st January, 1999 which was produced by the petitioner (original appellant) was not for the price of purchase of the twisting machine, but the same was for the purchase of scrap for Rs.16000/-. This type of writing on plain paper could be obtained at any time. Hence, no reliance could be placed on it.

4. I have perused the case papers and the impugned order passed by the appellate committee of the respondent. The learned counsel for the petitioner has also drawn my attention to similarly situated case of Rajesh Twisting Works. The said premises was also checked on 22nd February, 1999. For the said Rajesh Twisting Works, my attention is also drawn at Annexure "B" (page 28) to the memo of petition, wherein in column 8, it is mentioned that the installation of twisting machines is going on. In that similarly situated case also, the respondent authority has calculated the HPs for twisting machine for the issuance of the special or additional bill. In the said case, Rajesh Twisting Work

had preferred an appeal before the appellate committee of the respondent bearing no. SZ/ /11/13 dated 7th November, 2000. The appellate committee has made the following observations in its order.

" So far as relaxations that could be given to the appellant in the instant case are concerned, in view of the writing in the checking sheet that the installation of twisting machine was going on, the appellate committee is inclined to hold that the load of 8 HP of twisting machine should not be considered as connected load on the date of checking and the connected load for the purpose of calculation of SP bill in the instant case should be considered as 2 HP only."

5. I have compared the limited facts of Rajesh Twisting Works. There also, installation of twisting machine was going on, on the date of the checking i.e. on 22nd February, 1999. The premises of the petitioner was also checked on the same day i.e. on 22nd February, 1999. Similar is the noting of 22nd February, 1999 by the officers of the respondents in column no. 10 of Annexure "B" (page 23 of the memo of petition) for the premises of the petitioner to the effect that installation of twisting machine is going on.

6. Looking to the aforesaid facts and circumstances, it appears that the appellate committee of the respondent has not properly appreciated the fact tht when the installation of the machinery is going on, the HP for that machinery cannot be taken into consideration for applying formula A x B x C x D. Thus, the calculation of Factor A will be reduced to the extent to which there shall be reduction in HP so far as twisting machine is concerned. The said reduction is already reflected in the order of the appellate committee in a comparable case of Rajesh Twisting Works and the relevant portion has been referred to hereinabove. Similar treatment, so far as aforesaid limited facts are concerned, ought to have been given to the petitioner also. Once the installation of machinery is going on, as per the checking report prepared by the officers of the respondent authority which is produced at Annexure "B" to the petition, especially column no. 10 thereto, the HPs of twisting machine of which installation was going on, should not have been calculated by the respondent authority while calculating factor A. The learned counsel for the petitioner has not argued on any other point except the above point. So far as rest factors, B, C and D are concerned, as there are no arguments, I am not going into the details of factors B, C and D in the

formula A x B x C X D. But as narrated hereinabove, comparing the case of petitioner with that of Rajesh Twisting Works, Pandora, Surat alongwith the order passed in comparable case, by the appellate committee, the relevant portion of which is reproduced hereinabove, in my view, there is an error in the order passed by the appellate committee for not giving effect to the reduction in the Factor A. The facts of Rajesh Twisting Works, so far as " installation of twisting machine" is concerned, are exactly similar to the facts of the case of the petitioner.

7. Therefore, in view of the above facts and circumstances, this petition deserves to be allowed. The impugned bill issued by the respondent authority is hereby quashed and set aside. The respondent authorities are hereby directed to revise the bill of the petitioner by issuing a fresh calculation so far as factor A i.e. load factor is concerned, considering 2 HP instead of 10 HP. It is submitted by the learned counsel for the petitioner at this stage that the petitioner has already paid the whole amount towards the special/additional bill issued by the respondent authority. It is hoped that after considering the aforesaid direction, if the new bill is reduced, the amount already paid by the petitioner, will be given set off, in accordance with law. Rule made absolute to the above extent with no order as to costs. Direct service permitted.

(D.N.Patel,J)

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